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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/755,583	01/12/2004	Jeffrey Kozak	4002-3420	9189
30565	7590	03/17/2005		
WOODARD, EMHARDT, MORIARTY, MCNETT & HENRY LLP BANK ONE CENTER/TOWER 111 MONUMENT CIRCLE, SUITE 3700 INDIANAPOLIS, IN 46204-5137			EXAMINER RAMANA, ANURADHA	
			ART UNIT 3732	PAPER NUMBER

DATE MAILED: 03/17/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

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<b>Office Action Summary</b>	Application No. 10/755,583	Applicant(s) KOZAK ET AL.	
	Examiner Anu Ramana	Art Unit 3732	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 13 December 2004.
- 2a) ☐ This action is FINAL.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 13-21 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 13,14,16 and 19-21 is/are rejected.
- 7) ☒ Claim(s) 15,17 and 18 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 1/12/2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## **DETAILED ACTION**

### ***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter, which the applicant regards as his invention.

Claims 20-21 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In claim 20, lines 4-5 and claim 21, line 3, the limitation "first-mentioned screws" renders the claims vague and indefinite since it is not clear which screws are the "first -- mentioned" screws. Appropriate correction is required.

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

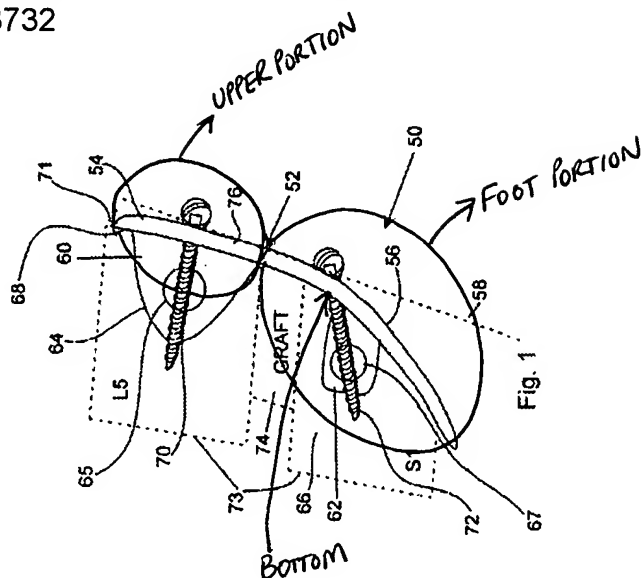
A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claim 13 is rejected under 35 U.S.C. 102(e) as being anticipated by Zucherman et al. (US 6,045,552).

Zucherman et al. disclose a plate for use in immobilizing L5, S1 vertebrae having: a foot portion partially in the intervertebral space; screws 65 in the upper portion of the plate, fixing the plate to an L5 vertebra; and screws 72 extending downwardly from the front through the bottom of the foot portion into S1 (Fig. 1, col. 3, lines 22-67 and col. 4, lines 1-16). See marked up Figure 1 on following page.

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The claimed method steps are inherently performed during normal use of the Zucherman et al. fixation plate for the purpose of immobilizing L5, S1 vertebrae.

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 14, 16 and 19-21 are rejected under 35 U.S.C. 103(a) as being unpatentable over Zucherman et al. (US 6,045,552), as applied to claim 13, in view of Freid et al. (US 6,331,179).

Zucherman et al. disclose all elements of the claimed invention except for screws 72 installed on convergent paths and anti-backout devices.

Regarding claim 16, Zucherman et al. disclose bone graft 74 inserted in the intervertebral space between L5 and S1 vertebrae (col. 4, lines 9-16).

Freid et al. teach installing screws on converging paths to prevent screw backout (Fig. 3 and col. 1, lines 41-52). Freid et al. also teach the use of mechanisms for anchoring or locking fastener heads to prevent backout of fasteners (col. 2, lines 32-37 and lines 55-67 and col. 3, lines 1-16).

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Accordingly it would have been obvious to one of ordinary skill in the art at the time the invention was made to have installed screws 72 in the Zucherman et al. plate on convergent paths, as taught by Freid et al., to prevent screw backout.

Claims 14 and 20-21 are rejected under 35 U.S.C. 103(a) as being unpatentable over Zucherman et al. (US 6,045,552), as applied to claim 13, in view of Michelson (US 6,193,721).

Zucherman et al. disclose all elements of the claimed invention except for screws 72 installed on convergent paths and anti-backout screws.

Michelson teaches screws installed on convergent paths and an anti-backout screw 21 with a conical head adapted to engage and interlock the surfaces of screws 30 to prevent backout of screws 30 from a plate (Fig. 43, col. 8, lines 12-24 and col. 26, lines 17-20).

Accordingly it would have been obvious to one of ordinary skill in the art at the time the invention was made to have installed screws 72 in the Zucherman et al. plate on convergent paths and to have provided an anti-backout screw, as taught by Michelson, to prevent screw backout.

### ***Response to Arguments***

Applicants' arguments submitted under "REMARKS" in the response filed on December 13, 2004 have been fully considered and are persuasive with respect to the objections to the Specification, the rejections under 35 USC 112 paragraph 2 of claims 14-19 and the provisional double patenting rejections of claims 13-21 made in the office action mailed on August 11, 2004. Accordingly, the Examiner is withdrawing these objections and rejections.

Applicants' arguments with respect to the rejections of claims 13-14, 16 and 19-21 are moot in view of the new grounds of rejection.

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***Allowable Subject Matter***

Claims 15, 17 and 18 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

***Conclusion***

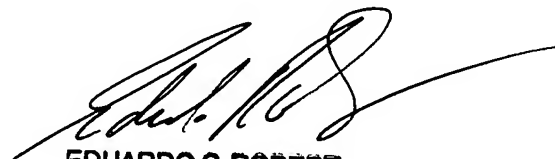
The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Anu Ramana whose telephone number is (571) 272-4718. The examiner can normally be reached Monday through Friday between 8:00 am to 5:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Kevin Shaver can be reached at (571) 272-4720. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

AR   
March 12, 2005

  
EDUARDO C. ROBERT  
PRIMARY EXAMINER